

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

10 WILLIAM J. JONES,  
11 CDC #V-27774,

12 Plaintiff,

13 vs.

14  
15  
16  
17 JOHN DOVERY, G.T. JANDA, L.E.  
18 SCRIBNER, M.E. BOURLAND, M.  
19 LEVIN, M. CORREA, L.C. ORDUNO, D.  
20 SAWTELL, J. KELLERMAN, MADDEN,  
T. OCHOA, KILPA, ZENDEJAS, and V.  
BACH,

21 Defendants.

10 Civil No. 06-1979 LAB (AJB)

11 **ORDER:**

12 (1) DIRECTING U.S. MARSHAL  
13 TO EFFECT SERVICE OF  
14 SUMMONS AND FIRST AMENDED  
15 COMPLAINT [Doc. No. 7]  
16 PURSUANT TO FED.R.CIV.P. 4(c)(2)  
17 AND 28 U.S.C. § 1915(d);

18 (2) GRANTING PLAINTIFF'S  
19 REQUEST FOR SUMMONS  
20 [Doc. No. 8]; AND

21 (3) DENYING PLAINTIFF'S  
22 MOTION FOR EXTENSION OF  
23 TIME TO FILE FIRST AMENDED  
COMPLAINT AS MOOT  
[Doc. No. 6]

24 On September 18, 2006, Plaintiff, William Jones, a state prisoner currently incarcerated  
25 at Kern Valley State Prison in Delano, California, and proceeding pro se, submitted a civil rights  
26 Complaint pursuant to 42 U.S.C. § 1983.<sup>1</sup> In addition, Plaintiff filed a Motion to Proceed *In*

27  
28 <sup>1</sup> The proceedings were assigned to this Court, but all post-service matters have been referred  
to Magistrate Judge Anthony J. Battaglia by Local Rule 72.3(e), "Assignment of § 1983 Prisoner Civil  
Cases to United States Magistrate Judges," pursuant to 28 U.S.C. § 636.

1 *Forma Pauperis* (“IFP”). The Court granted Plaintiff’s Motion to Proceed *IFP* but sua sponte  
 2 dismissed his Complaint for failing to state a claim upon which § 1983 relief could be granted.  
 3 See November 15, 2006 at 9-10. Nonetheless, the Court granted Plaintiff forty five (45) days  
 4 to file an Amended Complaint correcting the deficiencies of pleading identified by the Court.  
 5 *Id.* On December 26, 2006, Plaintiff filed his First Amended Complaint (“FAC”) [Doc. No. 7].

6 **I. Sua Sponte Screening per 28 U.S.C. § 1915(e)(2) and § 1915A**

7 The Prison Litigation Reform Act obligates the Court to review complaints filed by all  
 8 persons proceeding IFP and by those, like Plaintiff, who are “incarcerated or detained in any  
 9 facility [and] accused of, sentenced for, or adjudicated delinquent for, violations of criminal law  
 10 or the terms or conditions of parole, probation, pretrial release, or diversionary program,” “as  
 11 soon as practicable after docketing.” See 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Under these  
 12 provisions, the Court must sua sponte dismiss any prisoner and all other IFP complaints, or any  
 13 portions thereof, which are frivolous, malicious, fail to state a claim, or which seek damages  
 14 from defendants who are immune. See 28 U.S.C. §§ 1915(e)(2)(B) and 1915A; *Lopez v. Smith*,  
 15 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); *Resnick v. Hayes*, 213 F.3d  
 16 443, 446 (9th Cir. 2000) (§ 1915A); *see also Barren v. Harrington*, 152 F.3d 1193, 1194 (9th  
 17 Cir. 1998) (discussing § 1915A). “[W]hen determining whether a complaint states a claim, a  
 18 court must accept as true all allegations of material fact and must construe those facts in the light  
 19 most favorable to the plaintiff.” *Resnick*, 213 F.3d at 447; *Barren*, 152 F.3d at 1194 (noting that  
 20 § 1915(e)(2) “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”).

21 Here, the Court finds that Plaintiff’s First Amended Complaint survives the sua sponte  
 22 screening required by 28 U.S.C. §§ 1915(e)(2) and 1915A(b), and that Plaintiff is therefore  
 23 automatically entitled to U.S. Marshal service on his behalf. See *Lopez*, 203 F.3d at 1126-27;  
 24 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process, and perform  
 25 all duties in [IFP] cases.”); FED.R.CIV.P. 4(c)(2) (providing that “service be effected by a United  
 26 States marshal, deputy United States marshal, or other officer specially appointed by the court  
 27 ... when the plaintiff is authorized to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915.”).

1       In the Court's November 15, 2006 Order, Plaintiff was informed that if he chose to file  
 2 a First Amended Complaint, any defendant not named and any claim not re-alleged in his  
 3 Amended Complaint would be considered waived. *See* Nov. 15, 2006 Order at 9 (citing *King*  
 4 *v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987)). In his First Amended Complaint, Plaintiff only  
 5 names as Defendants Dovery, Janda, Scribner, Bourland, Levin, Correa, Orduno, Sawtell,  
 6 Kellerman, Madden, Ochoa, Kilpa, Zendejas, and Bach. (FAC at 1-5). Accordingly, Plaintiff  
 7 has waived his claims against all remaining Defendants previously named in the original  
 8 Complaint and the Clerk of the Court is directed to terminate those Defendants from the docket.

9 **II. Conclusion and Order**

10       Good cause appearing, **IT IS HEREBY ORDERED** that:

11       1. Plaintiff's Motion requesting the Clerk to issue summons [Doc. No. 8] is  
 12 **GRANTED**. The Clerk shall issue the summons as to **Dovery, Janda, Scribner, Bourland,**  
 13 **Levin, Correa, Orduno, Sawtell, Kellerman, Madden, Ochoa, Kilpa, Zendejas, and Bach**,  
 14 provide Plaintiff with a certified copy of both this Order and his First Amended Complaint and  
 15 forward them to Plaintiff along with a blank U.S. Marshal Form 285 for each Defendant named  
 16 in his First Amended Complaint. Plaintiff shall complete the Form 285s and forward them to  
 17 the United States Marshal. The U.S. Marshal serve a copy of the First Amended Complaint  
 18 upon Defendants Dovery, Janda, Scribner, Bourland, Levin, Correa, Orduno, Sawtell,  
 19 Kellerman, Madden, Ochoa, Kilpa, Zendejas, and Bach as directed by Plaintiff on each U.S.  
 20 Marshal Form 285. All costs of service shall be advanced by the United States. *See* 28 U.S.C.  
 21 § 1915(d); FED.R.CIV.P. 4(c)(2).

22       2. Defendants are thereafter **ORDERED** to reply to the First Amended Complaint  
 23 within the time provided by the applicable provisions of Federal Rule of Civil Procedure 12(a).  
 24 *See* 42 U.S.C. § 1997e(g)(2) (while Defendants may occasionally be permitted to "waive the  
 25 right to reply to any action brought by a prisoner confined in any jail, prison, or other  
 26 correctional facility under section 1983," once the Court has conducted its sua sponte screening  
 27 pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b), and thus, has made a preliminary  
 28

1 determination based on the face on the pleading alone that Plaintiff has a “reasonable  
2 opportunity to prevail on the merits,” Defendants are required to respond).

3       3. Plaintiff shall serve upon Defendants or, if appearance has been entered by  
4       counsel, upon Defendants' counsel, a copy of every further pleading or other document  
5       submitted for consideration of the Court. Plaintiff shall include with the original paper to be  
6       filed with the Clerk of the Court a certificate stating the manner in which a true and correct copy  
7       of any document was served on Defendants, or counsel for Defendants, and the date of service.  
8       Any paper received by the Court which has not been filed with the Clerk or which fails to  
9       include a Certificate of Service will be disregarded.

**IT IS FURTHER ORDERED that:**

11           4. Plaintiff's Motion for Extension of Time to File First Amended Complaint is [Doc.  
12 No. 6] is **DENIED** as moot.

**IT IS SO ORDERED.**

14 || DATED: February 27, 2007

Larry A. Bunner

**HONORABLE LARRY ALAN BURNS**  
United States District Judge